

7-17-1. Legislative intent.

It is the intent of the Legislature that the provisions of this act govern the rights, duties and liabilities of borrowers and lenders with respect to reserve accounts established before and after the effective date of this act.

Enacted by Chapter 124, 1979 General Session

7-17-2. Definitions.

As used in this chapter:

(1) "Real estate loan" means any agreement providing for a loan secured by an interest in real estate in this state containing a residential structure of not more than four housing units, at least one of which is the primary residence of the borrower and includes, but is not limited to, agreements secured by mortgages, trust deeds, and conditional land sales contracts.

(2) "Borrower" means any person who becomes obligated on a real estate loan at the time of origination of such loan and includes mortgagors, trustors under trust deeds and vendees under conditional land sales contracts.

(3) "Lender" means any person who regularly makes, extends or holds real estate loans and includes, but is not limited to, mortgagees, beneficiaries under trust deeds and vendors under conditional land sales contracts and who regularly require or maintain reserve accounts.

(4) "Person" includes an individual, a commercial bank, savings bank, building and loan corporation, savings and loan association, credit union, investment company, insurance company, pension fund, mortgage company, trust company, or any other organization making real estate loans.

(5) "Reserve account" means any account, whether denominated escrow, impound, trust, pledge, reserve or otherwise, which is established in connection with a loan secured by an interest in real estate located in this state, whether or not a real estate loan as defined in this chapter, and whether incorporated into the loan agreement or a separate document, whereby the borrower agrees to make periodic prepayment to the lender or its designee of taxes, insurance premiums or other charges pertaining to the property securing the loan and the lender or its designee agrees to pay the taxes, insurance premiums or other charges out of the account on or before their due date.

(6) "Service charge" means any direct fee imposed in connection with the administration of a reserve account.

(7) A loan is "made" when the lender makes its initial disbursement of the loan proceeds.

Amended by Chapter 15, 1981 General Session

7-17-3. Lender to pay interest -- Exceptions -- Service charges prohibited.

(1) Except as provided in Subsection (2), each lender requiring the establishment or continuance of a reserve account in connection with an existing or future real estate loan shall, on a yearly basis as of December 31, calculate and credit to the account interest on the average daily balance of funds deposited in the account

at a rate equal to:

- (a) 5-1/2%;
- (b) the average of the 11th District monthly weighted average cost of funds index as calculated and published by the Federal Home Loan Bank of San Francisco during the calendar year, less 1-1/2 percentage points; or
- (c) the statement savings rate or share account rate offered to the public for accounts of like size by the depository institution holding the reserve account.

(2) Subsection (1) does not apply to:

- (a) a reserve account required by a governmental insurer or guarantor of the loan as a condition of insurance or guaranty;
- (b) a reserve account maintained in connection with a real estate loan in an original principal amount exceeding 80% of the lender's appraised value of the property at the time the loan is made, until the principal balance of the loan is paid down to 80% of the lender's appraised value at the time of the loan; or
- (c) payment of interest or other compensation to the borrower if this payment is prohibited by federal law or regulations.

(3) A lender may not require or impose a service charge for the administration of a reserve account.

Amended by Chapter 182, 1996 General Session

7-17-4. Options in lieu of reserve account -- Notice by lender -- Selection by borrower -- Noninterest-bearing reserve account -- Exemption.

(1) A lender not requiring the establishment and maintenance of a reserve account shall offer the borrower the following options:

- (a) the borrower may elect to maintain a noninterest-bearing reserve account to be serviced by the lender at no charge to the borrower; or
- (b) the borrower may manage the payment of insurance premiums, taxes and other charges for the borrower's own account.

(2) (a) The lender shall give written notice of the options to the borrower:

(i) with respect to real estate loans existing on July 1, 1979, by notice mailed not more than 30 days after July 1, 1979; or

(ii) with respect to real estate loans made on or after July 1, 1979, by notice given at or prior to the closing of the loan.

(b) The notice required by this Subsection (2) shall:

(i) clearly describe the options; and

(ii) state that:

(A) a reserve account is not required by the lender;

(B) the borrower is legally responsible for the payment of taxes, insurance premiums, and other charges; and

(C) the notice is being given pursuant to this chapter.

(c) For real estate loans in existence on July 1, 1979, the borrower shall select one of the options prior to 60 days after July 1, 1979.

(d) If no option is selected prior to 60 days after July 1, 1979, the borrower will be considered to have selected the option described in Subsection (1)(a), provided, however, that the borrower at a later time may select the option described in Subsection

(1)(b).

(e) For loans made on or after July 1, 1979, the borrower shall select one of the options at the closing.

(f) If the borrower selects the option described in Subsection (1)(a), the lender may not be required to account for earnings, if any, on the account.

(3) (a) Subject to Subsection (3)(b), if the borrower who selects the option described in Subsection (1)(b), or the borrower's successors or assigns, fails to pay the taxes, insurance premiums, or other charges pertaining to the property securing the loan prior to the delinquency date for such payments, the lender may require a reserve account without interest or other compensation for the use of the funds.

(b) Notwithstanding Subsection (3)(a), the lender may not require a reserve account without interest or other compensation if:

(i) the borrower pays any delinquency within 30 days; and

(ii) the borrower has not previously been delinquent in payment of taxes, insurance premiums, or other charges.

(4) This section does not apply to a loan made, renewed, or modified on or after May 6, 2002.

Amended by Chapter 378, 2010 General Session

7-17-5. Statements.

Every lender shall furnish to the borrower, or his successors or assigns, without charge, within 60 days after the end of each calendar year, an itemized statement showing money (1) received for interest and principal repayment and (2) received and held in or disbursed from a reserve account, if any.

Enacted by Chapter 124, 1979 General Session

7-17-6. Liability of lender for failure to pay taxes, insurance premiums, or other charges.

A lender administering a reserve account shall make timely payments of taxes, insurance premiums and other charges for which the account is established, if funds paid into the account by the borrower, his successors or assigns, are sufficient for the payments. Negligent failure to make the payments required for taxes, insurance premiums and other charges as they become due, from available funds in the reserve account, shall subject the lender to liability for all damages directly resulting from the failure; provided that this sentence does not deprive the lender of the right to present any defense it may have in any action brought to enforce the liability. Failure of the borrower or his successors or assigns to deliver promptly to the lender all notices of tax assessments and insurance premiums or other charges, received by the borrower, his successors or assigns, shall relieve the lender from liability under this section.

Amended by Chapter 378, 2010 General Session

7-17-7. Limit on amount borrower required to pay into account -- Deficiency -- Method of recouping and remedies for default.

A lender in connection with a real estate loan may not require a borrower, the borrower's successors or assigns, or a prospective borrower:

(1) to deposit in any reserve account established in connection with the loan, prior to or upon closing, a sum exceeding the estimated total payments for taxes, insurance premiums, or other charges which will be due and payable on the date of closing, and the pro rata portion thereof which has accrued, plus 1/6th of the estimated total taxes, insurance premiums, and other charges which will become due and payable during the 12-month period beginning on the date of closing; or

(2) to deposit in any reserve account in any month beginning after closing a sum exceeding 1/12th of the total estimated taxes, insurance premiums, or other charges which will become due and payable during the 12-month period beginning on the first day of the month plus an amount necessary to maintain the additional balance permitted in Subsection (1) in the reserve account not to exceed 1/6th of the total estimated taxes, insurance premiums, or other charges that will become due and payable during the 12-month period beginning on the first day of the month, except that:

(a) if the lender determines there will be a deficiency on the due date, it may require additional monthly deposits in the reserve account of pro rata portions of the deficiency corresponding to the number of months from the date of the lender's determination of the deficiency to the date upon which the charges become due and payable;

(b) if the lender determines there is a deficiency on or after the due date, it may:

(i) bill the borrower, the borrower's successors or assigns, for the deficiency, which bill shall promptly be paid;

(ii) add the deficiency to the principal; or

(iii) charge the reserve account, and require additional monthly deposits in the reserve account for up to 12 months to recoup the deficiency;

(c) if the borrower, the borrower's successors or assigns, fails to pay any amount billed by the lender to meet the deficiency as permitted under Subsection (2)(b)(i), the lender may exercise any remedies for default contained in the real estate loan document. If such failure to pay continues for 30 days after written notice to borrower, the lender may also terminate any obligation to pay interest or to otherwise pay compensation for the use of the funds in the reserve account.

Amended by Chapter 182, 1996 General Session

7-17-8. Damages for lender's violation of act -- Limitations on recovery.

(1) Except as otherwise provided in this act, a lender who violates this act is liable to the borrower, his successors or assigns, for the actual damages suffered by the borrower, his assigns or successors, or \$100, whichever is greater. If an action is commenced, the prevailing party may be awarded reasonable attorney's fees as determined by the court.

(2) A lender has no liability under this section if the court finds that written demand for payment of the claim of the borrower, his successors or assigns, was made on the lender not less than 30 days before commencement of the action and that the lender tendered to the borrower, his successors or assigns, prior to the commencement of the action, an amount not less than the damages awarded.

(3) A lender may not be held liable under this section for a violation of this act if the lender shows that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures to avoid such errors.

(4) A reserve account established or maintained in violation of this act is voidable, at the option of the borrower, his successors or assigns, at any time, but does not otherwise affect the validity of the loan, the security interest in the real property or any other obligation of the borrower.

(5) No action under this section may be brought more than one year after the date of the violation.

Amended by Chapter 378, 2010 General Session

7-17-9. Actions on accounts established prior to 1979 -- Limitations on recovery.

(1) With respect to any reserve account established prior to July 1, 1979 and for which no legal action is pending as of January 1, 1979, no recovery shall be had in any action brought to require payment of interest on, or other compensation for, the use prior to July 1, 1979, of the funds in such account unless:

(a) An agreement in writing expressly so providing was executed by the borrower and the lender; or

(b) The borrower, or his successors or assigns, establishes by clear and convincing evidence an agreement between the parties that the lender would pay interest on or to otherwise compensate the borrower for the use of the funds in such account. Use in the loan documents of such words as "trust" or "pledge" alone does not establish the intent of the parties; and

(c) There is no federal law or regulation prohibiting the payment of interest on or otherwise compensating the borrower for the use of the funds in such an account.

(2) No action seeking payment of interest on or other compensation for the use of the funds in any reserve account for any period prior to July 1, 1979, shall be brought after June 30, 1981. Any recovery in any such action shall be limited to the four-year period immediately preceding the commencement of the action. No recovery shall be had in respect of any reserve account established prior to July 1, 1979 greater than if the provisions of Section 7-17-3 of this act were applicable to such accounts.

(3) With respect to any reserve account established prior to July 1, 1979, an agreement in writing between the lender and the borrower, or his successors or assigns, that (a) the provisions of Section 7-17-3 of this act shall apply to all payments made subsequent to July 1, 1979, or (b) the borrower may exercise, for the period subsequent to July 1, 1979, either of the options provided in Section 7-17-4 of this act, shall bar any recovery by the borrower, his successors or assigns, for interest on or other compensation for the use of the funds in such account for any period prior to July 1, 1979.

Amended by Chapter 378, 2010 General Session

7-17-10. Applicability of act to accounts and actions thereon.

The provisions of this act shall apply:

- (1) to all reserve accounts; and
- (2) to all actions filed after January 1, 1979, to recover interest on or other compensation for the use of the funds in any reserve account whether or not the reserve accounts were established prior to or subsequent to July 1, 1979.

Enacted by Chapter 124, 1979 General Session